

# INDEX

	Page
Summary and Short Statement .....	1-6
Reasons Relied Upon for Grant of Certiorari.....	6
Brief in Support of Petition for Certiorari.....	7
Opinion of the Courts Below .....	7
Jurisdiction .....	7
Statement .....	8
Specification of Errors .....	8
Summary of Argument .....	8
Point I—The decision below leaves the Drachen- berg patent dominating an industry, with no likelihood that there will ever be opportunity for further challenge of its validity .....	9-10
Point II—It is not invention merely to select and aggregate unrelated features taken from prior art .....	10
Point III—Aggregation is demonstrated by apply- ing the claims .....	10-14
Point IV—The claims at issue do not include the structure upon which Drachenberg's alleged commercial success is based .....	14-15
Point V—The claims at issue seek to repatent an old combination by reclaiming it with a sub- stituted element .....	15-17
Conclusion .....	17

## TABLE OF CASES

Altoona Publix Theaters v. American Tri-Ergon Corp., 294 U.S. 477 .....	7
Bassick Mfg. Company vs. R. M. Hollingshead Co., 298 U.S. 415 .....	16
Cuno Engineering Corp. vs. Automatic Devices Corp., 314 U.S. 84 .....	14
Lincoln Engineering Co. vs. Stewart-Warner Corp., 303 U.S. 545 .....	17
Muncie Gear Works, Inc., et al vs. Outboard Marine & Manufacturing Co. et al, 315 U.S. 100; 315 U.S. 759 .....	7
Paramount Publix Corp. v. American Tri-Ergon Corp., 294 U.S. 464 .....	7
Schriber-Schroth Co. v. Cleveland Trust Co., 305 U.S. 47 .....	7, 9
Toledo Pressed Steel Co. v. Standard Parts, Inc., 307 U.S. 350, 355 .....	10, 15

IN THE  
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1945

No.

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MODERN PRODUCTS SUPPLY COMPANY,  
*Petitioner,*

*vs.*

RICHARD E. DRACHENBERG,  
*Respondent.*

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**PETITION OF MODERN PRODUCTS SUPPLY  
COMPANY FOR A WRIT OF CERTIORARI  
TO THE CIRCUIT COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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*To the Honorable, the Chief Justice of the United States  
and Associate Justices of the Supreme Court:*

Your Petitioner, Modern Products Supply Company, respectfully prays for a writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit to review the judgment of that Court entered on the 13th day of December, 1945. A transcript of the record in the case, including the proceedings in the Circuit Court of Appeals, is furnished herewith in accordance with the rules of this Court.

**SUMMARY AND SHORT STATEMENT**

Petitioner, as plaintiff, commenced this suit in the District Court for the Eastern District of Michigan, Southern Division, charging infringement of Jenkins

patent No. 1,953,714. Respondent Drachenberg counter-claimed on his patent No. 2,273,093, (R. III 926) asserting claims 6, 7, 8, 9 and 15 to be infringed. From a judgment dated December 19, 1944, in favor of Respondent, (R. II 775) Petitioner appealed to the Sixth Circuit Court of Appeals, by which Court said judgment was affirmed. (152 F 2nd 203) This petition seeks to review that portion of the judgment finding claims 6, 7, 8, 9 and 15 of Respondent's patent No. 2,273,093 valid. It is conceded that these claims are infringed if valid.

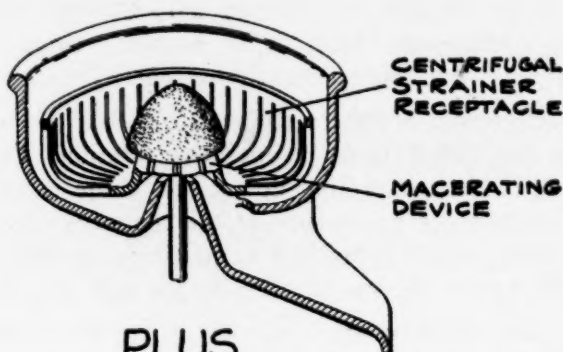
The claims at issue relate to a device for extracting juice from fruit and vegetables. Apart from the juice-collecting housing, the motor, and the base, common to all devices of this character, the claims are directed to an aggregation of two elements: (1) a centrifugal strainer which comprises a rotatable perforate receptacle; and (2) a specific pulping device comprising a macerating means rotatable with the receptacle across a stationary off-center chute. (Some of the claims expressly define the chute as eccentric while others bring out the fact of its eccentricity by reciting that its area is less than that traversed by the rotating macerating means and that the macerating means wipes across the delivery end of the chute).

The centrifugal strainer of the claims in suit is taken bodily from the expired patent to Brophy 1,454,918. (R. III, 861) It is also found in Miller 1,757,326. (R. III, 922)

The macerating means and off-center chute of the claims in suit is taken bodily from the expired patent to Steere 1,346,739. (R. III, 849)

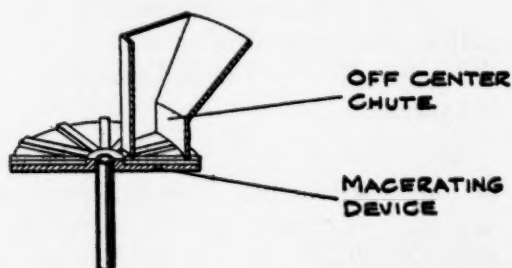
*Drachenberg claims merely Brophy's whirling perforated bowl and housing, doing precisely what they*

BROPHY  
1,454,918



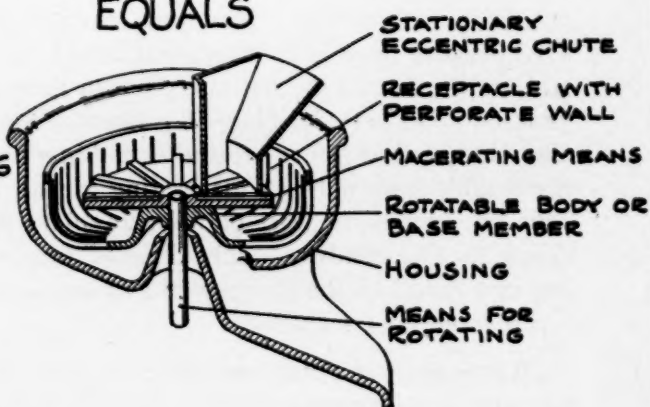
PLUS

STEERE  
1,349,739



EQUALS

WHAT  
DRACHENBERG  
CLAIMS



*did in Brophy, in assembly with Steere's grinding disc and off-center chute, doing precisely what they did in Steere. See the accompanying cut.*

Not only are these elements old, but the obvious fact is that they have no co-operative relation. The functioning of the macerating device and chute is unaffected by the presence or absence of the centrifuge and the functioning of the centrifuge is unaffected by the presence or absence of the macerating device and off-center chute.

Any question as to whether the macerating devices of Brophy or Steere are as good as that of the Respondent, Drachenberg, is irrelevant because the claims in suit have nothing to say about the nature of the macerating device but call merely in the broadest terms for *any* macerating means.

The combination purporting to be patented is old and no longer patentable. The improvement, if any, resided in a single element or feature not mentioned in the claims. Steere 1,349,739 (R. III, 849) shows the macerating device and off-center chute in the old chute—macerator—strainer combination. The only change claimed by Drachenberg was the incorporation of a *centrifugal* strainer in place of the stationery screen shown by Steere. Jenkins 1,953,714 (R. III, 797) likewise shows the entire chute—macerator—strainer combination including the rotatable base with its macerating means 36, the surrounding perforate wall or filtering plate 40, and the chute 30, Drachenberg's only claimed improvement being in a detail of the shape of the chute (reduced from a full circle to a segment).

Of course, it is Petitioner's position that there was in no event any invention either in the centrifugal strainer or the off-center chute. But since Drachenberg's entire

combination other than his specific strainer was old in Steere and since his entire combination other than the specific chute was old in Jenkins, it is apparent that there was nothing patentable about the combination as claimed.

Regardless of the extent to which the lower Courts were influenced by considerations which, in their view, affected the equities as between the parties, the situation here is one which vitally affects the general public. The Court of Appeals found as a fact that the parties to this litigation manufacture the only devices available to the public for this purpose.

"Drachenberg and plaintiff's imitation of Drachenberg are the only machines shown to be sold for the precise purpose." Opinion of CCA. (152 Fed. 2nd 203, 206)

If this judgment stands, Petitioner is eliminated and Respondent retains a broad monopoly. This patent so broadly interpreted by the Sixth Court of Appeals, thus dominates the entire industry under circumstances making it unlikely that there will be further adjudication.

What this means to the industry is shown in the following quotation from "Health Food Retailing" for Jan.-Feb. , 1946, Page 29:

"The green light on the whole potent merchandising endeavor was recently given by the U. S. District Court for the Eastern District of Michigan in upholding Mr. Drachenberg's exclusive patents on the centrifugal type of extractor. Further solidifying Mr. Drachenberg's position, a higher court also put its approval on the patent."

The Drachenberg patent issued in 1942. Unless this Court acts, it appears that Respondent can successfully monopolize for the next thirteen years an alleged invention whose sole merit as claimed is based on a selection

and aggregation of desirable features from two expired patents to do exactly what they were intended to do in those patents.

### REASONS RELIED UPON FOR A GRANT OF CERTIORARI

The discretionary power of the Court is invoked upon the following grounds:

1. The Court of Appeals for the Sixth Circuit has sustained as valid a patent which is asserted by that Court itself to dominate and control the entire industry.

2. The Court of Appeals for the Sixth Circuit has held that it is broad invention to select and aggregate wholly unrelated features from two different devices and to bring them together in a combination already old, this holding being in direct conflict with applicable decisions of this Court and the general weight of authority throughout the country.

*Wherefore* your Petitioner respectfully prays that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Sixth Judicial Circuit, demanding said Court to certify and to send to this Court on a date to be designated a full transcript of the records and all the proceedings the Court of Appeals had in this cause to the end that this cause may be reviewed and determined by this Court, and that the judgment of the Court of Appeals be reversed insofar as it found Drachenberg Patent 2,273,093 to be valid and that Petitioner may be granted such other and further relief as may seem proper.

*Respectfully submitted,*

WILL FREEMAN,  
S. L. WHEELER,

March 9, 1946.

*Counsel for Petitioner.*



